

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

DAVID JOHNSTON,

Defendant.

Civil Action No. 16-10607-NMG

ORAL ARGUMENT REQUESTED

*Leave to File in Excess of 20 Pages  
Granted on April 12, 2019*

**DEFENDANT DAVID JOHNSTON'S RULE 50(b) MOTION FOR JUDGMENT AS A  
MATTER OF LAW OR FOR A NEW TRIAL**

The defendant, David Johnston, moves pursuant to Fed. R. Civ. P. 50(b) for judgment as a matter of law on all claims against him. In the alternative, and as permitted by Rule 50(b), Mr. Johnston asks the Court for a new trial under Rule 59, either (1) on all claims against him, or (2) on the claim asserted under Section 17(a)(2) of the Securities Act of 1933. Submitted with this motion is a memorandum of law that explains why the Court should grant it.

Dated: April 22, 2019

Respectfully submitted,

**DAVID B. JOHNSTON**

By his attorneys,

/s/ John F. Sylvia

John F. Sylvia, BBO # 555581  
Andrew N. Nathanson, BBO # 548684  
Matthew D. Levitt, BBO # 660554  
Emily Kanstroom Musgrave, BBO # 678979  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, P.C.  
One Financial Center  
Boston, Massachusetts 02111  
Telephone: (617) 542-6000  
Facsimile: (617) 542-2241  
JFSylvia@mintz.com  
ANNathanson@mintz.com  
MDLevitt@mintz.com  
EKMusgrave@mintz.com

**LOCAL RULE 7.1(a)(2) CERTIFICATION**

I certify that counsel for Defendant has conferred with counsel for Plaintiff in a good faith attempt to resolve or narrow the issues raised by this motion.

/s/ John F. Sylvia

John F. Sylvia

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on April 22, 2019.

/s/ John F. Sylvia

John F. Sylvia